

HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC.,

Plaintiff,

v.

NICHOLAS MINOR a/k/a "LORD
NAZO,"

Defendant.

CASE NO. 2:22-CV-371-MJP

**DECLARATION OF KATHRYN
TEWSON**

1. I am a paralegal and investigator for Kamerman, Uncyk, Soniker, and Klein. I am over 18 years old and make this declaration in support of the motion of Plaintiff Bungie, Inc. ("Bungie") for summary judgment, based on my personal knowledge of the facts relayed herein, and could and would testify competently to the facts set forth herein if called to do so.

I. My Background and Experience

2. I have been employed as an investigator and paralegal at KUSK since January 2021. I have a background in technology, including hardware, software, and networking, which often informs my investigative work. Attached hereto as **Exhibit 1** is my resume.

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1 3. As an investigator, I specialize in Open Source Intelligence (“OSINT”) –
2 the identification, authentication, corroboration, and analysis of data that is publicly
3 available and legally accessible. My work involves finding relevant data from a
4 multitude of diverse sources, establishing that the data is both accurate and reliable,
5 and analyzing it in context with facts obtained from various other sources, such as
6 from clients, additional investigative work, or formal discovery, in order to establish
7 information and conclusions that are material to the cases I work on. I conduct
8 comprehensive digital investigations to locate and identify threat actors, potential
9 defendants and witnesses, and relevant history and information, both in my work for
10 KUSK and for my own clients outside the firm, and I am responsible for documenting
11 the process and results of these investigations so as to ensure the admissibility and
12 effectiveness of my investigative findings in court. The attorneys in my firm, and the
13 firm’s clients, regularly rely on my findings and conclusions. I have also presented on
14 OSINT to corporate security and Trust and Safety organizations, including to the New
15 York Times Trust and Safety team.

16 4. I have had the honor of working closely with Unit221B, an elite cyber
17 investigation firm, and of having my work audited by their specialists to assess its
18 compliance with the ethical standards and best practices of this field. Attached hereto
19 as **Exhibits 2 and 3** are the affidavits of Allison Nixon, Head of Research at Unit221B,
20 and Steven Guris, Director of Threat Investigation at Unit221B, submitted in a previous
21 court case, attesting to my skill and their own conclusions that I am a fully qualified
22 and reliable expert in OSINT investigative work. Ms. Nixon and Mr. Guris have
23 themselves been qualified as experts in the investigation, and their expert testimony
24 was admitted – and relied on by courts (or arbitrators) - in multiple proceedings.

25 5. My work often involves the examination of electronic metadata and other
26 non-visible information contained in documents and communications to establish their
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1 authenticity, history, or the timing of their creation or modification.

2 **II. Bungie's Identification of Minor**

3 6. In March 2022, I was assigned to investigate the identity of the individual
4 who issued the Fraudulent Takedowns purportedly on behalf of Bungie as part of my
5 regular work duties for the firm.

6 7. When the investigation began, we knew that the Fraudulent Takedowns
7 had been issued from two gmail addresses: (the "Reynolds Account") and (the
8 "Wiland Account") between March 16, 2022 and March 22, 2022. We also knew that
9 Bungie's brand protection service had issued several takedowns in the beginning of
10 March 2022, with Bungie's approval.

11 8. At Bungie's request, I reviewed documents and information produced in
12 response to a subpoena issued to Google, Inc. in this action (the "Google Records"). I
13 also reviewed documents and information provided to me by Bungie from their own
14 databases (the "Bungie Records") as well as documents and information provided to
15 me by Bungie's brand protection vendor (the "CSC Records"). Attached hereto as
16 **Exhibit 4** is the Certificate of Authenticity provided by the Custodian of Records for
17 Google. Based on these records, I was able to conclusively identify Nicholas Minor as
18 the individual who issued the Fraudulent Takedowns.

19 **A. The IP Address Information Establishes that the Wiland and Reynolds 20 Accounts were Under Common Control**

21 9. The IP login information contained in the Google Records establishes that
22 damianreynoldscsc@gmail.com (the "Reynolds Account") and
23 jeremywilandcsc@gmail.com (the "Wiland Account") were under common control and
24 that the activity associated with both accounts originated at the same residence.

25 10. Attached hereto as **Exhibits 5 and 6** are true and correct copies of the IP
26 login information for the Wiland and Reynolds accounts from the Google Records. I
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1 have prepared a table combining and summarizing the IP login information provided
2 in Exhibits 1 and 2 in chronological order, attached hereto as **Exhibit 7**.

3 11. Between February 5, 2022, and March 25, 2022, both the Wiland Account
4 and the Reynolds Account consistently logged in from IP address 135.26.144.241 (the
5 “.241 Address”). See **Ex. 7**, rows **2-18**. I performed a lookup for the .241 Address using
6 IPQualityScore.com and the results indicated that the .241 Address is part of the
7 135.26.144.x subnet, and is registered to the Roseville, CA location of Consolidated
8 Communications, a residential Internet service provider (“ISP”). Attached hereto as
9 **Exhibit 8** is a true and correct copy of the IPQualityScore.com lookup results. Because
10 residential ISPs like Consolidated assign IP addresses to residential customers as part of
11 their home Internet packages, this IP address is associated with one and only one
12 physical address – the residence of the Consolidated Communications customer to
13 whom that IP address is assigned. Any Internet activity that originates from the .241
14 Address originates from that residence. Since the Wiland Account and the Reynolds
15 Account both logged in from the .241 address, I concluded that both accounts were
16 operated from the same residence.

17 12. In addition, the timing of the logins from both accounts indicates that they
18 were under common control. The Reynolds account and the Wiland account often
19 logged in within very close temporal proximity, often less than an hour – or even just a
20 few minutes – apart. In fact, on March 23, 2022, the Reynolds account logged out from
21 the .241 Address and the Wiland account logged in from the .241 Address *within the*
22 *same second* (at 6:07:28 a.m.). See **Ex. 7**, highlighted rows **11-13**. Such close timing
23 between the logout of one account and the login of the other indicates a virtual certainty
24 that both accounts were operated by the same user.

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B. Minor's *Destiny*-Related Activity During This Period Also Originates from the .241 Address, Connecting Him to the Reynolds and Wiland Logins

13. The Bungie Records contain information about Minor's *Destiny* gameplay activity, as well as his customer information and purchase records from Bungie's merchandise store.

14. Minor regularly logged into his *Destiny* account from the .241 address during the relevant time period, indicating that he was frequently present in the residence.

15. Minor also ordered a physical music CD, the Original Soundtrack for the "Witch Queen" expansion, from the Bungie store and had it delivered to his residence in Rocklin, CA. Rocklin is located approximately twelve miles from Roseville, CA, close enough to be within the service range of the Roseville Consolidated Communications location that served the .241 Address. The purchase included a digital asset (the "Witch Queen Emblem"), which Minor redeemed by clicking on a link embedded in an email Bungie sent to the email address Minor provided. That email address was PerfectNazo1@gmail.com. When Minor clicked on the link embedded in the email Bungie sent to the PerfectNazo1 Address to download the Witch Queen Emblem, Bungie's systems recorded the originating IP address of the download request as the .241 Address. Because the .241 address is known to be associated with a residence in the Roseville, CA area, it is virtually certain that the *Destiny* account logins, the Wiland account logins, and the Reynolds account logins were not only all originating from the same residence but that the residence in question was Minor's Rocklin, CA address.

C. The .241 Address Connects Minor to the Fraudulent Takedowns

16. The Google Records included information specific to individual email messages, including the sender, the recipient, and the time the email was sent, as well as a globally unique ID number specific to that individual email message known as the Message-ID (collectively, the "Envelope Information"), for each of the emails available in both the Reynolds Account and the Wiland Account. The

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Envelope Information also supplies the originating IP address for all emails sent from the target accounts. Envelope Information is also part of an email's SMTP header, which is not ordinarily displayed to the user but which can be readily accessed as part of the message if actively looked for. The Envelope Information for the Reynolds and Wiland accounts that Google provided are attached hereto as **Exhibits 9 and 10**. The Google Records also included PDF printouts of the correspondence, including the Fraudulent Takedowns themselves, between the Reynolds and Wilands accounts and YouTube (the "PDF Correspondence"), which includes the display name of the sender, the email address of the recipient, the date and time the email was sent, and the contents of the email. A true and correct copy of the PDF Correspondence is attached hereto as **Exhibit 11**.

17. Because the data produced in the Envelope Information is not coextensive with the data produced in the PDF Correspondence, I have prepared a table interleaving the data pertaining to the Fraudulent Takedown Notices from each source in chronological order, attached hereto as **Exhibit 12**. The rows identified by Bates number represent emails from the PDF Correspondence, while the rows identified by Message-ID represent emails from the Envelope Information. While not every email in the Envelope Information is contained within the PDF Correspondence, there is substantial overlap between the two data sets. While the recipients and send times for the emails in each data set display identically, the sender appears different because YouTube uses "plus addressing" to streamline the management of content disputes. With plus addressing, users can add custom strings to their email addresses just before the "@" sign and separated from their main username by a "+" sign; the resulting address variation will be delivered to the default mailbox, but the custom string allows for extra filtering and sorting after the email is delivered. YouTube utilizes plus addressing by adding a unique 15-digit alphanumeric tag to the default youtube-disputes@google.com address for each individual content

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1 dispute, allowing its employees to manage disputes individually without creating a
 2 new email address for each dispute. The PDF Correspondence, however, shows only
 3 the display name for the default email address, which is “video-rights,” although
 4 exceptions apply when an employee has been assigned to a dispute specifically.

5 18. When arranged chronologically, each email from the PDF Correspondence
 6 corresponds to an email from the Envelope Information in send time and recipient. I
 7 have highlighted each pair in different colors to make the pairing clear. Although most
 8 of the emails in the PDF Correspondence are sent from YouTube **to** the Reynolds
 9 Account or the Wiland Account, there are two that originated **from** the Reynolds
 10 Account, **Ex. 12** at rows **59-60** and rows **78-79** and one that originated from the Wiland
 11 Account, *id.* at rows **132-133**. Because these emails originated from the target accounts,
 12 the originating IP address – the .241 address – was captured by the Envelope
 13 Information, establishing that the infringement specifically originated from the
 14 residence already connected to Minor by his *Destiny*-related activity.

15 **D. Minor’s Counternotice Confirms His Residence and His Connection to the** 16 **Issue**

17 19. Moreover, Minor also sent a DMCA counternotice to YouTube in response
 18 to the Bungie-authorized DMCA takedown notices against his channel (the
 19 “PerfectNazo1 Counternotice”). A true and correct copy of this counternotice is
 20 attached hereto as **Exhibit 13**. In this counternotice, Minor identified his full name, his
 21 Rocklin, CA address, and the Lord Nazo YouTube account as associated with the
 22 PerfectNazo1@gmail.com email.

23 **E. Conclusion**

24 20. The evidence I reviewed in the course of my investigation for Bungie is
 25 self-reinforcing and strongly conclusive:

- 26 • The PerfectNazo1 Counternotice establishes that Minor lives in
 27 Rocklin, CA, that he operates the Lord Nazo YouTube Channel, that he

1 was aware of the Fraudulent Counternotice, and that he controls the
2 PerfectNazo1 Address;

- 3 • the Bungie Records establish that Minor's "Overlord Nazo" *Destiny*
4 account was associated with the PerfectNazo1 Address, which is
5 connected to the *Destiny* servers from the .241 address, and that
6 merchandise purchased by Minor was shipped to his Rocklin, CA
7 address and accessed from the .241 Address;
- 8 • the IP Address Information establishes that both the Reynolds Account
9 and the Wiland Account were under common control and were
10 regularly accessed from the .241 Address; and
- 11 • the Google Records further establish that the infringing conduct
12 originated from the same .241 Address.

13 Based on the number and strength of the connections between Minor, the .241
14 Address, and the Fraudulent Takedowns, I was able to identify Minor as the individual
15 behind the Fraudulent Takedowns with virtual certainty.

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17 Executed on December 22, 2023,

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19 /s/ Kathryn Tewson
20 Kathryn Tewson

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